

GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Mines and Minerals – High Powered Committee constituted for fixing of sale price of Bauxite ore to be supplied by M/s A.P.Mineral Development Corporation Limited to end User Aluminium Companies in Andhra Pradesh - Recommendations of the High Powered Committee - Accepted - Orders - Issued.

INDUSTRIES AND COMMERCE (M-III) DEPARTMENT

G.O. Ms. No. 222

Dated 13-08-2008

Read the following:-

- 1) MoU dated 01-07-2005 between GoAP and M/s JSWH Limited as amended on 03-08-2007 and 15-11-2007.
- 2) MoU dt.14-02-2007 between GoAP and Government of Ras Al Khaimah.
- 3) From the Vice-Chairman & Managing Director, M/s A.P.Mineral Development Corporation Limited, Note dated 28.05.2007.
- 4) G.O.Rt.No.475, Ind. & Com (M.III) Department, dt.01-08-2007
- 5) G.O.Rt.No.735, Ind. & Com (M.III) Department, dt. 06-11-2007.

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ORDER:

In the reference 1st and 2nd read above, Government of Andhra Pradesh have entered into a Memorandum of Understanding (MoU) with M/s Jindal South West Holdings Limited and the Government of Ras-Al-Khaimah for supply of Bauxite through M/s Andhra Pradesh Mineral Development Corporation Limited for the proposed Alumina/Aluminium Refineries and Smelters to be established in non-scheduled areas of Andhra Pradesh. Among others, it is also agreed therein that the sale price of Bauxite ore to be supplied by M/s A.P.Mineral Development Corporation Limited to the Aluminium Companies to be incorporated by M/s Jindal South West Holdings Limited and Government of Ras-Al-Khaimah, shall be fixed by a High Powered Committee to be constituted by the Government.

2. In the reference 3rd read above, the Vice-Chairman & Managing Director, M/s A.P.Mineral Development Corporation Limited, Hyderabad has requested the Government to constitute a High Powered Committee to fix the sale price for supply of Bauxite ore to M/s Jindal South West Holdings Limited and the Government of Ras – Al – Khaimah, as agreed in the reference 1st & 2nd read above, and other end User Aluminium Companies. Now, M/s. Jindal South West Holdings Limited and Government of Ras-Al-Khaimah have incorporated the Aluminium Companies under the Companies Act, 1956, in the name and style of "JSW Aluminium Limited" and " AnRak Aluminium Limited" respectively for the purpose of establishment of the said Refineries and Smelters in terms of the MOUs referred to above.

3. In the G.Os 4th and 5th read above, Government have constituted a six member High Powered Committee for fixation of sale price of Bauxite and the percentage of equity that M/s Andhra Pradesh Mineral Development Corporation Limited shall demand in the proposed Value Added Industry with a direction that the Committee shall take into consideration the following points and to submit their report within six months :-

- (1) sale price of bauxite ore shall be fixed for the end user aluminium companies to establish the cost of operations, which will be required by financial institutions and banks to determine the viability of the project so as to fund the same.
- (2) Committee shall fix the price based on similar cases in Orissa/Chattisgarh/Gujarat.

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- (3) The pricing basis followed by M/s Orissa Mining Corporation ensures that the entire capital cost and the operating cost are fully recovered as well as M/s Orissa Mining Corporation receives a profit which is linked with the selling price of aluminium metal which is an internationally accepted pricing mechanism. The Government of India, Ministry of Mines also acknowledges the fact, and has thus shifted the fixing of royalty on major mineral ores from fixed basis to an advalorem basis, so that the Government's revenue increases with the increase in finished metal prices.
- (4) The committee shall also decide the equity percentage to be given to M/s A.P.Mineral Development Corporation Limited/ Government of Andhra Pradesh.
- (5) The Committee shall get the advice of professional bodies such as the ICICI, ILFS or any other competent body which can give a report on the prices of Bauxite from time to time. The Committee must use this as an input while determining the price.

4. The High Powered Committee in the meeting held on 27.12.2007, have suggested to consult M/s Price Water House Coopers Private Limited, an internationally reputed consulting firm, with certain terms and conditions mentioned therein.

5. M/s Price Water House Coopers Private Limited have submitted its final report on the study of bauxite price methodology and also on equity participation of M/s APMDC Ltd.

6. (i) The Price Water House Coopers Private Limited in its report finally indicated that :

"In the light of return on investment and royalty being comparable at the prevailing aluminum prices and the precedent of Orissa Mining Corporation using Royalty to determine the payment to be made to the mining Company, the usage of royalty method to determine the profit component may be considered by APMDC.

When return on investment is treated in equivalent royalty terms, this amounts to 1.25 times of the royalty charged for bauxite. This includes 20% of Net Profit which is to be allocated to tribals as per Supreme Court Ruling on Samatha Vs State of Andhra Pradesh.

The costs of production as may be incurred by APMDC should be completely reimbursed for which a commercial agreement specifying the terms and conditions of payment may separately be signed with the private investors.

The equity share (if any) of APMDC in the Aluminum Project may be mutually decided by APMDC and the investor, within the frame work of the MoU".

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(ii) The High Powered Committee met on 23.01.2008 and 26-03-2008 and have examined the data made available by M/s Andhra Pradesh Mineral Development Corporation Limited and the reports submitted by M/s Price Water House Coopers Private Limited and also the sale price formula arrived at by M/s Orissa Mining Corporation as per its MoU dt.05-10-2004 with M/s Vedanta Aluminium Limited for fixing the sale price of Bauxite. Since, nowhere in India, there are units which are purchasing Bauxite for the consumption in Value Added Industry, the MoU entered into by M/s Orissa Mining Corporation, a State PSU of Orissa, with that of M/s Vedanta Aluminium Ltd., is the only comparable parameter available on record and hence the Committee examined the salient features of the agreement entered into by M/s Orissa Mining Corporation with M/s Vedanta Aluminium Ltd. As per the said agreement :- (i) M/s Vedanta Aluminium Ltd., shall pay to M/s Orissa Mining Corporation an amount equivalent to royalty at the prevailing rate for every ton of Bauxite ore mined, and (ii) In the event and from the time when both the Refinery and Aluminium Smelter are operational, M/s Vedanta Aluminium Ltd shall pay to M/s Orissa Mining Corporation an amount equivalent to 50% of the prevailing royalty for every Ton of Bauxite ore mined, which is eventually converted into Aluminium in Orissa.

(iii) The Vice Chairman & Managing Director, M/s APMDCLTD., and Member Convener of the High Powered Committee brought to the notice of the Committee that M/s Andhra Pradesh Mineral Development Corporation Limited shall pay 20% of the profit for tribal development. In order to compensate this factor, the Committee felt that the profit component to M/s Andhra Pradesh Mineral Development Corporation Limited apart from the production cost and all statutory levies, should be fixed at 1.25 times of the prevailing royalty so that M/s Andhra Pradesh Mineral Development Corporation Limited will get a net profit equivalent to royalty even after allocating 20% of the profit for tribal development.

(iv) Further, with regard to 50% concession offered by M/s Orissa Mining Corporation in the event of establishment of Aluminium Refinery & Smelter, the same is not considered in the present case, since Government of Andhra Pradesh has accepted the proposal for supply of Bauxite to the end users with a stipulation that they shall establish both Smelter & Refinery to produce Aluminium as well as Alumina in the State of Andhra Pradesh. The report submitted by M/s Price Water House Coopers Private Limited, after elaborate study also recommended to adopt the model of M/s Orissa Mining Corporation only.

(v) With regard to equity to be offered to M/s Andhra Pradesh Mineral Development Corporation Limited in the Value Added Industry; though M/s Price Water House Cooper Private Limited, suggested a nominal equity stake of 1.07% in the Value Added Industry to be established by both M/s Jindal South West Holdings Ltd., and Government of Ras-Al-Khaimah, the Committee recommended that the equity holding of M/s Andhra Pradesh Mineral Development Corporation Limited in the Value Added Industry to be set up by Aluminium companies shall be upto 1.5% of the total equity subject to a maximum of Rs.50.00 Crores and also that it shall be by way of adjustment annually out of the sale consideration amount for

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Bauxite payable by the two companies to M/s Andhra Pradesh Mineral Development Corporation Limited over a period of 10 Years with a provision for the Government to nominate a Director on the Boards of the respective companies. Thus after elaborate discussions, the committee has come to the following conclusions :

- (1) To adopt the model of Orissa relating to the price for Bauxite supplies to be made by Andhra Pradesh Mineral Development Corporation Limited with the following parameters:
 - a) The Aluminium companies shall reimburse the Cost of production of Bauxite at actuals to be incurred by Andhra Pradesh Mineral Development Corporation Limited.
 - b) All statutory levies, taxes etc., shall be borne by the Aluminium Companies at actuals.
 - c) The Profit payable to Andhra Pradesh Mineral Development Corporation Limited shall be computed at the rate of 1.25 times of the royalty payable by Andhra Pradesh Mineral Development Corporation Limited on Bauxite to the State Government.
 - d) Since the rate of Royalty is dynamic and is subject to revision once in every 3 years by Government of India and as and when it gets revised, the same shall be applicable for arriving at the profit component to Andhra Pradesh Mineral Development Corporation Limited.
- (2) The equity holding of Andhra Pradesh Mineral Development Corporation Limited in the value added industry to be set up by Aluminium companies will be upto 1.5% of the total equity, subject to a maximum of Rs.50.00 crores, which shall be by way of adjustment annually out of the sale consideration amount for bauxite payable by the Companies to APMDC over a period of 10 years with a provision for the Government to nominate a Director on the Boards of the respective Companies.
- (3) Andhra Pradesh Mineral Development Corporation Limited shall enter into a detailed Bauxite supply agreement. The draft Bauxite supply agreement may also be referred to M/s PWHC (Price Water House Coopers) for their scrutiny.
- (4) The Aluminium Companies have to establish and commission Alumina Refinery and Aluminium Smelter with capacities of 1.4 MTPA and 0.25 MTPA respectively within Andhra Pradesh duly obtaining all the necessary clearances within 3 to 5 years from the date of Bauxite Supply Agreement.
- (5) The Aluminium Companies shall deposit a non-refundable, interest-free amount to Andhra Pradesh Mineral Development Corporation Limited as may be recommended from time to time to cover any and all expenditure that is required to be incurred by the Corporation in getting grant of mining leases and also towards cost of infrastructure required for development of Mines and other related expenditures within the period stipulated in the Bauxite Supply Agreement to be entered into by the two Aluminium Companies with Andhra Pradesh Mineral Development Corporation Limited.
- (6) The Aluminium Companies shall nominate one Director from APMDC on the Board of Directors of the Aluminium Companies.

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- (7) If Andhra Pradesh Mineral Development Corporation Limited decides to hire machinery and other equipment required for mining, the Andhra Pradesh Mineral Development Corporation Limited shall give the first right of refusal for giving such items on hire, to the respective Aluminium Companies. Similarly as and when the Andhra Pradesh Mineral Development Corporation Limited decides to award Raising Contract, Andhra Pradesh Mineral Development Corporation Limited shall give the first right of refusal to the Aluminium Companies. Such right of first refusal shall also be given to the Aluminium Companies, as and when new contracts in place of old contracts are proposed to be entered into, for the purpose.
- (8) The Aluminium Companies shall train local tribals identified by the Department of Tribal Welfare in allied subjects (both at skills level miner, Polytechnic and Degree Level) for making use of them in the proposed project and ultimately absorb them in the industry as far as possible and substantial amount on the turnover shall be earmarked for this purpose.
- (9) A minimum of 0.5% of the Revenue of their Alumina refinery / Alumina Smelter shall be spent by the Aluminium Companies towards Schooling, Health, Training, Social Infrastructure and Welfare of Local Tribals.
- (10) The Aluminium Companies shall purchase ROM ore of Bauxite as produced by the Andhra Pradesh Mineral Development Corporation Limited for effective utilization in their plants located in Andhra Pradesh only and shall not utilize/ sell the same for any other purposes.
- (11) Aluminium Companies shall submit irrevocable Performance Bank Guarantee for an amount of Rs.5.00 cores in favour of Andhra Pradesh Mineral Development Corporation Limited drawn on any Nationalized Bank within a period of 30 days from Signing of Bauxite Supply Agreements between APMDC and the said Aluminium Companies. This Bank Guarantee shall be valid for the total period of the contract.
- (12) All the terms and conditions mentioned in the MoU, dt.01.07.2005, 03-08-2007 and 15-11-2007 entered into with M/s Jindal South West Holdings Limited and MoU, dt.14-02-2007 entered into with the Government of Ras-Al-Khaimah shall also form part of the Bauxite Supply Agreement and Andhra Pradesh Mineral Development Corporation Limited shall ensure fulfillment of those conditions by the Companies.

7. The Government have examined the matter in detail and after careful consideration, hereby accept and approve the above recommendations of the High Powered Committee, in toto and direct M/s Andhra Pradesh Mineral Development Corporation Limited to enter into Bauxite supply agreements and take necessary further action accordingly by taking the approvals of Government wherever required from time to time, if necessary, and intimate the action taken by them at every stage to Government, scrupulously. The Bauxite Supply Agreement shall be entered into with a stipulation that it shall not be implemented till permission of the Government of India is obtained by Government of Andhra Pradesh / M/s Andhra Pradesh Mineral Development Corporation Limited under Section 2(ii) of Forest Conservation Act, 1980, and also Environment Clearances for the Bauxite Mining Project as per the directions of Hon'ble High Court of Andhra Pradesh in W.P. No.1571, dt.20-06-2006.

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8. This order issues with the concurrence of Finance (Expr.I&C) Department, vide their U.O.No.1657/111/Expr.I&C/2008, dated 11-03-2008 and U.O.No.3146/205/Expr.I&C/2008, dated 08-04-2008.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**Y. SRILAKSHMI
SECRETARY TO GOVERNMENT**

To
The Vice Chairman & Managing Director, M/s Andhra Pradesh Mineral Development Corporation Limited, Ameerpet, Hyderabad.

Copy to:

The Director of Mines & Geology, Andhra Pradesh, Hyderabad.
The Secretary to Govt. of India, Ministry of Mines, Shastri Bhavan,
New Delhi-110 001.
The Controller General, Indian Bureau of Mines, 2nd Floor, "A" Block,
Indira Bhavan, Civil Lines, Nagpur-440 001.
The Regional Controller of Mines, Indian Bureau of Mines, Koti, Hyderabad
The Finance (Expr.I&C) Department.
The Public Enterprises (PE.III) Department.
The General Administration (Cabinet) Department (w.r.t. CR No.230/2008).
PS to Special Secretary to Hon'ble Chief Minister.
PS to Hon'ble Minister for Mines & Geology.
PS to Chief Secretary to Government.
PS to Secretary to Government, Industries & Commerce Department.
SF/SC (C.NO.4364/M.III(2)/2007)

***"Copy of this order is available on Internet and can be
accessed at address <http://www.ap.gov.in/goir>".***

//Forwarded :: By Order//

SECTION OFFICER